

HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JESSE WESLEY,

Plaintiff,

vs.

CBS RADIO SERVICES, INC., a foreign  
corporation, CBS RADIO STATIONS, INC., a  
foreign corporation, MICHAEL FASHANA and  
his community property, and CINDY  
JOHNSON and her community property,

Defendants.

NO. 2:18-cv-00466-RSL

STIPULATED PROTECTIVE ORDER

[Clerk's Action Required]

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

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GORDON REES SCULLY  
MANSUKHANI, LLP  
701 5th Avenue, Suite 2100  
Seattle, WA 98104  
Telephone: (206) 695-5100  
Facsimile: (206) 689-2822

1 2. "CONFIDENTIAL" MATERIAL

2 "Confidential" material shall include the following documents and tangible things  
3 produced or otherwise exchanged:

4 (a) all employee, client, or customer personal information (including, but not limited  
5 to financial, medical, age, and contact information), salary information, and social security  
6 numbers,

7 (b) medical and mental health records pertaining to the parties, or any non-party, to the  
8 extent the information is discoverable,

9 (c) employee personnel files and documents related to personnel actions taken by  
10 Defendants with regard to non-party employees to the extent they are discoverable,

11 (d) information and documents regarding non-public complaints in the possession of  
12 Defendant, made by non-party current or former employees, officers, or directors, that reference any  
13 current or former non-party employee, officer, or director,

14 (e) financial records and statements of the parties, including tax records, to the extent they  
15 are discoverable, and

16 (f) proprietary business information, information regarding corporate strategy, a trade  
17 secret, or other commercial or financial information that would result in competitive or commercial  
18 harm in the marketplace if the material were disseminated to persons outside CBS or reviewed by  
19 persons other than those specifically identified herein for purposes of this litigation.

20 3. SCOPE

21 The protections conferred by this agreement cover not only confidential material (as  
22 defined above), but also (1) any information copied or extracted from confidential material;  
23 (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any  
24 testimony, conversations, or presentations by parties or their counsel that might reveal  
25 confidential material.

1 However, the protections conferred by this agreement do not cover information that is in  
2 the public domain or becomes part of the public domain through trial or otherwise.

3 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4 4.1 Basic Principles. A receiving party may use confidential material that is disclosed  
5 or produced by another party or by a non-party in connection with this case only for prosecuting,  
6 defending, or attempting to settle this litigation. Confidential material may be disclosed only to  
7 the categories of persons and under the conditions described in this agreement. Confidential  
8 material must be stored and maintained by a receiving party at a location and in a secure manner  
9 that ensures that access is limited to the persons authorized under this agreement.

10 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
11 ordered by the court or permitted in writing by the designating party, a receiving party may  
12 disclose any confidential material only to:

13 (a) the receiving party's counsel of record in this action, as well as employees  
14 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

15 (b) the officers, directors, and employees (including in house counsel) of the  
16 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
17 agree that a particular document or material produced is for Attorney's Eyes Only and is so  
18 designated;

19 (c) experts and consultants to whom disclosure is reasonably necessary for  
20 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit  
21 A);

22 (d) the court, court personnel, and court reporters and their staff;

23 (e) copy or imaging services retained by counsel to assist in the duplication of  
24 confidential material, provided that counsel for the party retaining the copy or imaging service  
25

1 instructs the service not to disclose any confidential material to third parties and to immediately  
2 return all originals and copies of any confidential material;

3 (f) during their depositions, witnesses in the action to whom disclosure is  
4 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"  
5 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
6 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
7 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
8 under this agreement;

9 (g) the author or recipient of a document containing the information or a  
10 custodian or other person who otherwise possessed or knew the information.

11 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
12 referencing such material in court filings, the filing party shall confer with the designating party  
13 to determine whether the designating party will remove the confidential designation, whether the  
14 document can be redacted, or whether a motion to seal or stipulation and proposed order is  
15 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the  
16 standards that will be applied when a party seeks permission from the court to file material under  
17 seal.

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
20 or non-party that designates information or items for protection under this agreement must take  
21 care to limit any such designation to specific material that qualifies under the appropriate  
22 standards. The designating party must designate for protection only those parts of material,  
23 documents, items, or oral or written communications that qualify, so that other portions of the  
24 material, documents, items, or communications for which protection is not warranted are not  
25 swept unjustifiably within the ambit of this agreement.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
2 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
3 unnecessarily encumber or delay the case development process or to impose unnecessary  
4 expenses and burdens on other parties) expose the designating party to sanctions.

5 If it comes to a designating party's attention that information or items that it designated  
6 for protection do not qualify for protection, the designating party must promptly notify all other  
7 parties that it is withdrawing the mistaken designation.

8 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
9 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
10 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
11 be clearly so designated before or when the material is disclosed or produced.

12 (a) Information in documentary form: (*e.g.*, paper or electronic documents  
13 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
14 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that  
15 contains confidential material. If only a portion or portions of the material on a page qualifies for  
16 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by  
17 making appropriate markings in the margins).

18 (b) Testimony given in deposition or in other pretrial proceedings: the parties  
19 and any participating non-parties must identify on the record, during the deposition or other  
20 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other  
21 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after  
22 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the  
23 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect  
24 confidential information at trial, the issue should be addressed during the pre-trial conference.  
25

1 (c) Other tangible items: the producing party must affix in a prominent place  
2 on the exterior of the container or containers in which the information or item is stored the word  
3 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,  
4 the producing party, to the extent practicable, shall identify the protected portion(s).

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
6 designate qualified information or items does not, standing alone, waive the designating party's  
7 right to secure protection under this agreement for such material. Upon timely correction of a  
8 designation, the receiving party must make reasonable efforts to ensure that the material is  
9 treated in accordance with the provisions of this agreement.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
12 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
13 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
14 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
15 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
16 original designation is disclosed.

17 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
18 regarding confidential designations without court involvement. Any motion regarding  
19 confidential designations or for a protective order must include a certification, in the motion or in  
20 a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
21 conference with other affected parties in an effort to resolve the dispute without court action. The  
22 certification must list the date, manner, and participants to the conference. A good faith effort to  
23 confer requires a face-to-face meeting or a telephone conference.

24 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
25 intervention, the designating party may file and serve a motion to retain confidentiality under

1 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
2 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
3 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on  
4 other parties) may expose the challenging party to sanctions. All parties shall continue to  
5 maintain the material in question as confidential until the court rules on the challenge.

6 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
7 LITIGATION

8 If a party is served with a subpoena or a court order issued in other litigation that compels  
9 disclosure of any information or items designated in this action as "CONFIDENTIAL," that  
10 party must:

11 (a) promptly notify the designating party in writing and include a copy of the  
12 subpoena or court order;

13 (b) promptly notify in writing the party who caused the subpoena or order to  
14 issue in the other litigation that some or all of the material covered by the subpoena or order is  
15 subject to this agreement. Such notification shall include a copy of this agreement; and

16 (c) cooperate with respect to all reasonable procedures sought to be pursued  
17 by the designating party whose confidential material may be affected.

18 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

19 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
20 material to any person or in any circumstance not authorized under this agreement, the receiving  
21 party must immediately (a) notify in writing the designating party of the unauthorized  
22 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,  
23 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of  
24 this agreement, and (d) request that such person or persons execute the "Acknowledgment and  
25 Agreement to Be Bound" that is attached hereto as Exhibit A.

1 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
2 MATERIAL

3 When a producing party gives notice to receiving parties that certain inadvertently  
4 produced material is subject to a claim of privilege or other protection, the obligations of the  
5 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
6 provision is not intended to modify whatever procedure may be established in an e-discovery  
7 order or agreement that provides for production without prior privilege review. The parties  
8 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

9 10. NON TERMINATION AND RETURN OF DOCUMENTS

10 Within 60 days after the termination of this action, including all appeals, each receiving  
11 party must return all confidential material to the producing party, including all copies, extracts  
12 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of  
13 destruction.

14 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
15 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
16 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
17 work product, even if such materials contain confidential material.

18 The confidentiality obligations imposed by this agreement shall remain in effect until a  
19 designating party agrees otherwise in writing or a court orders otherwise.

20 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

21 DATED: November 2, 2018

/s/ Favian Valencia

Favian Valencia, WSBA #43802  
Attorneys for Plaintiff JESSE WESLEY  
Sunlight Law, PLLC  
402 E. Yakima Ave, Suite 730  
Yakima Washington 98901  
Phone: (800) 307-1261  
Email: [favian@sunlightlaw.com](mailto:favian@sunlightlaw.com)

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**GORDON REES SCULLY  
MANSUKHANI, LLP**  
701 5th Avenue, Suite 2100  
Seattle, WA 98104  
Telephone: (206) 695-5100  
Facsimile: (206) 689-2822



1  
2  
3 DATED: November 2, 2018

/s/David W. Silke

David W. Silke, WSBA #23761  
Goldie A. Davidoff, WSBA #53387  
Attorneys for Defendants CBS RADIO  
SERVICES, INC., a foreign corporation,  
CBS RADIO STATIONS, INC., a foreign  
corporation, MICHAEL FASHANA and his  
community property, and CINDY  
JOHNSON and her community property  
Gordon Rees Scully Mansukhani, LLP  
701 5th Avenue, Suite 2100  
Seattle, WA 98104  
Phone: (206) 695-5112  
Fax: (206) 689-2822  
Email: [dsilke@grsm.com](mailto:dsilke@grsm.com)  
Email: [gdaavidoff@grsm.com](mailto:gdaavidoff@grsm.com)

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13  
14 PURSUANT TO STIPULATION, IT IS SO ORDERED

15 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
16 documents in this proceeding shall not, for the purposes of this proceeding or any other  
17 proceeding in any other court, constitute a waiver by the producing party of any privilege  
18 applicable to those documents, including the attorney-client privilege, attorney work-product  
19 protection, or any other privilege or protection recognized by law.

20  
21 DATED: Nov. 6, 2018

22  
23 Robert S. Lasnik  
Hon. Robert S. Lasnik  
United States District Court Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_[print or type full address], declare under penalty of  
perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
issued by the United States District Court for the Western District of Washington on [date] in the  
case of *Jesse Wesley v. CBS Radio Services, Inc., et al.*, Case No. 2:18-cv-00466-RSL. I agree to  
comply with and to be bound by all the terms of this Stipulated Protective Order and I  
understand and acknowledge that failure to so comply could expose me to sanctions and  
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner  
any information or item that is subject to this Stipulated Protective Order to any person or entity  
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Western District of Washington for the purpose of enforcing the terms of this Stipulated  
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_